Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

DOMINGO P. GIMALAY,
Petitioner,

-versus-

COURT OF APPEALS, GRANITE SERVICES INTERNATIONAL, INC., JOSEPH MEDINA, DANIEL SARGEANT,* and APRIL ANNE JUNIO,**
Respondents.

G.R. No. 240123 &
G.R. No. 240125

Members:

PERALTA, *C.J.*, *Chairperson*
CAGUIOA,
REYES, J., JR.,
LAZARO-JAVIER, and
LOPEZ, *JJ.*

Promulgated:
JUN 17 2020

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D E C I S I O N

LAZARO-JAVIER, *J.*:

The Case

This petition for review on *certiorari*[1] seeks to reverse the following dispositions of the Court of Appeals in CA-G.R. SP No. 130731 and CA-G.R. SP No. 134905:

1. Decision[2] dated August 18, 2017 reversing the decision of the National Labor Relations Commission (NLRC) and declaring as valid the dismissal of petitioner Domingo P. Gimalay; and

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* Sometimes spelled in the records as "Seargent."

** Not included as a party in the cases before the labor tribunals and the Court of Appeals.

1 *Rollo*, pp. 3-19.

2 Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justice Priscilla J. Baltazar-Padilla and Associate Justice Pedro B. Corales, *rollo*, pp. 20-45.

2. Resolution[3] dated May 29, 2018 denying petitioner's motion for reconsideration.

Antecedents

On February 2, 2004, private respondent Granite Services International, Inc. (Granite Services) hired petitioner Domingo P. Gimalay as mechanical technician/rigger on a project-based employment. On January 1, 2007, petitioner was hired as a regular member of the company's work pool.

Petitioner's contract with Granite Services required him to work on various projects at different locations here and abroad. For his assignment abroad, he would receive compensation based on the stipulated rates. For the periods that he was out of assignments, he would be entitled to P15,000.00 as monthly retainer or waiting fee. This amount was later increased to P18,000.00 on January 1, 2009.[4]

On January 25, 2012, petitioner was deployed to Ghana, Africa for a two (2) month contract on a monthly salary of USD900.00.[5]

Private respondents alleged that on February 23 and 24, 2012, petitioner repeatedly violated Granite Services' safety code. First, he was allegedly spotted working on top of a compressor casing at the back of a trailer instead of working *from* the trailer. Second, petitioner allegedly did not give proper clearance to the crane operator causing a compressor casing to swing towards an employee which could have caused serious danger to the latter's life. Lastly, petitioner allegedly stood on top of a turbine without a safety harness. Outage Excellence Leader Alan Carruth saw and reported these transgressions *via* e-mail to Granite Services' Human Resource Manager, private respondent Daniel Sargeant. A few days later, Service Manager Bonifacio Quedi launched a formal investigation. Meanwhile, petitioner completed his overseas contract and returned to the Philippines on March 3, 2012.[6]

On March 5, 2012, Service Manager Quedi called petitioner to a meeting and asked him to explain why he should not be dismissed for gross misconduct. Another meeting took place between them together with HR Manager Sargeant. On March 7, 2012, a formal notice of termination was served on petitioner.[7]

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3 *Id.* at 47-50.
4 *Id.* at 450-451.
5 *Id.* at 232 and 451.
6 *Id.* at 451.
7 *Id.* at 451-452.

Petitioner averred that on March 7, 2012, Granite Services' security guard prevented him from entering its premises. He claimed that even assuming that the alleged incidents were true, the penalty of dismissal was not commensurate to his so-called infractions.

The Labor Arbiter's Ruling

By Decision[8] dated August 31, 2012, Labor Arbiter Alberto B. Dolosa granted the relief prayed for and declared petitioner to have been illegally dismissed:

> **WHEREFORE**, premises considered, judgment is hereby entered declaring that the dismissal of complainant IILEGAL for failure of the respondents to substantially prove just cause and observance of due process. Consequently, respondents GRANITE SERVICES INTERNATIONAL INC. is hereby ordered to pay complainant DOMINGO P. GIMALAY, as of the date of this Decision, the following judgment awards:
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> | | | |
> |---|---|---|
> | 1. | Backwages | - P126,000.00 |
> | 2. | Separation Pay, in lieu of reinstatement | - 162,000.00 |
> | 3. | 10% Attorney's Fees | - 28,800.00 |
> | | TOTAL | P316,800.00 |
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[9]

Labor Arbiter Dolosa held that there was no concrete and credible evidence to substantially prove the incidents attributed to petitioner. There was also no concrete and credible evidence that the company launched a formal investigation affording petitioner a chance to explain his side. In any case, the infractions were for "near misses." The labor arbiter found that no actual accident happened, no one was injured, and no damage was inflicted. Hence, the labor arbiter opined that admonition or reprimand would have been the commensurate penalty, not dismissal.[10]

The labor arbiter, however, ruled that since petitioner had already completed his contract abroad at the time he was dismissed from his work, his backwages should be based on his monthly retainer or waiting fee of P18,000.00 and not on his monthly salary of USD900.00 when the alleged incidents happened.[11] Further, labor arbiter Dolosa ordered payment of separation pay in lieu of reinstatement because:

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8 *Id.* at 449-460.
9 *Id.* at 459-460.
10 *Id.* at 455-456.
11 *Id.* at 457-458.

> x x x reinstatement is no longer feasible because of the existence of strained relation between the parties and the respondent's lack of intention to reinstate the complainant by their offer, by way of amicable settlement, of separation pay during the mandatory conference. Notably, the settlement through payment of separation pay failed to materialize because of the parties' disagreement as to the rate of pay to be used.[12]

Both parties appealed to the NRLC. On one hand, private respondents argued that petitioner was dismissed for cause; on the other, petitioner claimed that the basis for his backwages should be his latest monthly salary in Ghana in the amount of USD900.00. He did not anymore question the directive to pay separation benefits in lieu of reinstatement. His appeal, in fact, was only focused on the amount of separation benefits awarded him.

The NLRC's Ruling

Through its Decision[13] dated March 7, 2013, the NLRC affirmed with modification:

> **Having established the illegality of the dismissal,** We sustain the grant of full backwages computed from the date the Complaint was dismissed up (to) the finality of this Decision, on top of the separation pay computed from January 1, 2007 likewise up to the finality of this Decision.
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> Both awards are based on his latest monthly salary of P264,867.17 per pay slip marked as Annexes "6-C" and "6-D", broken down as follows:
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> | | | |
> |---|---|---|
> | Salary from February 1, to 15, 2012 | = | P106,997.73 per Annex 6-C |
> | Salary from February 16 to 28, 2012 | = | P157,869.44 per (A)nnex 6-D |
> | Total | | P264,867.17 |
>
> Simple logic made it clear that the Complainant was hired to work, not to stand-by and do nothing. He was hired to work as Rigger and Mechanical Techinician abroad whose latest monthly salary paid to him on February 29, 2012 as such was, as computed above, P264,867.17 for the month of February, 2012 (Annexes 6-C and 6(-)D/Complainant's Position Paper) therefore it should be the basis of his backwages and separation pay. The "waiting fee or retainer fee" cannot be considered as his monthly salary as Rigger and Mechanical Technician because during the waiting period, he was not doing the work for which he was being employed.
>
> Forced to litigate to protect his rights, the Complainant is entitled to an award of attorney's fees not exceeding 10% of the judgment award.

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12 *Id.* at 457.

13 Penned by Commissioner Numeriano D. Villena and concurred in by Presiding Commissioner Herminio V. Suelo and Commissioner Angelo Ang Palaña, *id.* at 51-61.

Accordingly, the Decision is MODIFIED in that the Respondents are ordered to pay the Complainant, tentatively, the following:

1. Backwages: -
   1. Basic
      3/7/2012 (date dismissed) up to 2/7/2012 (date of this Decision)
      P264,867.17 x 11 months = P2,913,538.87

   2. 13th Month Pay: -
      P2,913,538.87/12 = P 242,794.906

   3. Service Incentive Leave Pay
      P264,867.17

      26
      = P10,187.20 x 11/12 x 11 months

      = P102,720:90 (SILP)

2. Separation Pay: -
   1/1/2007 up to 2/7/2012

   P264,867.17 x 6 years = P1,587,403.02
   TOTAL = P4,846,457.70

3. Attorney's fees of 10% = P484,645.77

   Total Award = P5,331,103.47

SO ORDERED.[14]

The NLRC agreed with the labor arbiter that there was no concrete and credible evidence to substantially prove the "near miss" incidents attributed to petitioner. There was also no proof that Outage Excellence Leader Carruth was petitioner's supervisor, and therefore, he could not be considered a competent witness. There was similarly no hard evidence to prove that a formal investigation was held and that petitioner was given the chance to explain his side. In the absence of substantial and procedural due process, petitioner was illegally dismissed.[15]

The NLRC, however, ruled that for purposes of computing the backwages, petitioner's salaries abroad must be considered. Hence, petitioner's *average monthly salary*, taking into account his retainer fee and monthly salaries abroad, should be the basis for the computation of the award of backwages.[16]

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14 *Id.* at 59-60.
15 *Id.* at 57-58.
16 *Id.* at 57.

In its Resolution[17] dated May 15, 2013, the NLRC denied private respondents' motion for reconsideration.[18]

Proceedings Before the Court of Appeals

Private respondents assailed the NLRC's Decision and Resolution *via* petition for *certiorari* before the Court of Appeals under **CA-G.R. SP No. 130731**.

Meantime, the NLRC issued an Entry of Judgment on June 25, 2013.[19] Pursuant thereto, the labor arbiter issued the Writ of Execution dated August 29, 2013. In the implementation thereof, the bank accounts and appeal bond of Granite Services were garnished. Even then, private respondents voluntarily complied with the Writ of Execution and deposited the amount of P5,014,303.47 constituting the judgment award less the amount covered by the appeal bond (P316,800.00).[20] Following the release of the full amount of P5,014,303.47, private respondents moved to lift the notices of garnishment. Under Order dated September 30, 2013, the labor arbiter denied the motion to lift the notices of garnishment. He also directed the NLRC Cashier to release the P5,014,303.47 to petitioner.[21]

Petitioner then sought an alias writ of execution to cover his additional claim of P2,872,450.52. Meantime, private respondents filed second motion to lift the notice of garnishment which the labor arbiter Dolosa granted per Order dated October 21, 2013.[22] Petitioner thus filed a Petition for Extraordinary Remedy with the NLRC to annul the aforesaid order and grant his monetary award of P3,188,083.87.

Under Resolution dated January 28, 2014, the NLRC granted petitioner's claim but only to the extent of P1,359,651.45 and directed labor arbiter to issue the corresponding Alias Writ of Execution for collection of petitioner's remaining monetary awards.[23]

In its subsequent Order dated February 25, 2014, the NLRC denied private respondents' motion for reconsideration.[24]

Private respondents, too, went back to the Court of Appeals *via* **CA-G.R. SP No. 134905** to question the NLRC Resolution dated January 28,

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17 Penned by Commissioner Numeriano D. Villena and concurred in by Presiding Commissioner Herminio V. Suelo and Commissioner Angelo Ang Palaña, *id.* at 217-220.
18 *Id.* at 550-565.
19 *Id.* at 24.
20 *Id.* at 25.
21 *Id.*
22 *Id.* at 25-26.
23 *Id.* at 26-27.
24 *Id.*

2014 granting petitioner's claim and Order dated February 25, 2014 denying their motion for reconsideration. This petition was consolidated with **CA-G.R. SP No. 130731**.

Proceedings Before the Court of Appeals

CA-G.R. SP No. 130731

Private respondents argued that petitioner was validly dismissed for serious misconduct and willful disobedience of company safety rules. They claimed that petitioner himself did not deny the incidents.

In the alternative, private respondents claimed that, if at all, petitioner was entitled to his additional money claims, the NLRC should have pegged it at P18,000.00, petitioner's monthly retainer/waiting fee. It was the amount he was receiving as salary when he got terminated. The stipulated salary for his overseas work in Ghana had become *functus oficio* because it was already a terminated and completed contract.[25]

CA-G.R. SP No. 134905

Private respondents claimed that the NLRC should not have entertained petitioner's Petition for Extraordinary Remedy because Section 15, Rule XII of the 2011 NLRC Rules of Procedure expressly stated that no appeal from the order or resolution issued by the labor arbiter during the execution proceedings shall be allowed or acted upon by the NLRC. They also stressed that petitioner was no longer entitled to any additional award due to the full satisfaction of the writ of execution.[26]

The Court of Appeals' Ruling

In its assailed Decision[27] dated August 18, 2017, the Court of Appeals reversed the NLRC rulings:

> **WHEREFORE**, premises considered, the twin Petitions are GRANTED.
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> Accordingly, the assailed Decision of the NLRC on March 7, 2013 and Resolution on January 28, 2014 are hereby REVERSED. Necessarily, private respondent Domingo Gimalay is hereby ordered to return to

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25 *Id.* at 28-30.

26 *Id.* at 31-32.

27 Penned by Associate Justice Eduardo B. Peralta, Jr. and concurred in by Associate Justice Priscilla J. Baltazar-Padilla and Associate Justice Pedro B. Corales, *id.* at 20-45.

> petitioners whatever amount he received pursuant to the Writ of Execution dated August 29, 2013 and the Updated Writ of Execution issued pursuant to the Order of the NLRC dated March 10, 2014, in conformity with Section 14, Rule XI of the 2011 NLRC Rules of Procedure. Nevertheless, petitioner-company is hereby ordered to pay private respondent nominal damages in the amount of P30,000.00 on account of its failure to observe procedural due process.
>
> **SO ORDERED.**[28]

The Court of Appeals held that petitioner was validly dismissed on ground of gross misconduct for flagrantly disregarding safety processes and procedures which endangered not only himself but others. Petitioner's infractions were personally witnessed by Outage Excellence Leader Carruth.[29] By signing Granite Services' Personal Safety Pledge, petitioner acknowledged that his employment might be terminated for grave misconduct or willful neglect in the discharge of duties.[30]

The Court of Appeals nonetheless agreed with both the labor arbiter and the NLRC that petitioner was denied due process. It held that private respondents failed to comply with the twin requirements of notice and hearing. It noted that there was no written notice of infraction served on petitioner nor proof of the alleged meeting where petitioner was supposed to have been afforded the opportunity to explain himself. For these deficiencies, entitled petitioner to nominal damages of P30,000.00.[31]

The Court of Appeals also held that petitioner is not entitled to the relief of extraordinary remedy and the issuance of an alias writ of execution. This flowed from his non-entitlement to backwages, separation pay, attorney's fees, and additional compensation and benefits.[32]

Under its assailed Resolution[33] dated May 29, 2018, the Court of Appeals denied petitioner's motion for reconsideration.

The Present Petition

Petitioner now faults the Court of Appeals for finding he was validly dismissed. He reiterates the factual findings of the labor arbiter and the NLRC that he did not violate Granite Services' safety procedures. He cites these tribunals' conclusion that there is no concrete and credible evidence to substantiate the alleged infractions charged against him.

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28 *Id.* at 44-45.
29 *Id.* at 37-39.
30 *Id.* at 41.
31 *Id.* at 41-43.
32 *Id.* at 43.
33 *Id.* at 47-50.

Petitioner further asserts that it was in fact Granite Services which provided an unsafe environment for its workers. He did not wear a harness during the third incident in question because there was no hangers or knobs to which a harness could be hooked. But even assuming his act was a violation of the safety code, this did not actually result in any damage to life or property, aside from the fact that it was only his first offense in his eight (8) years of service. This infraction does not call for the harshest penalty of dismissal from service.[34]

More, petitioner avers that private respondents misled the Court of Appeals and the labor tribunals when they insisted that his employment contract in Ghana had been completed. He was, in fact, repatriated to the Philippines to pave the way for his next deployment to another country. His repatriation, nonetheless, was just the start of the grand scheme to dismiss him.[35]

In their Comment[36] dated February 8, 2019, private respondents seek to dismiss the petition on procedural and substantial grounds.

On procedural grounds, private respondents stress that the petition was filed one (1) day late. Petitioner received the copy of the Court of Appeal's Resolution denying his motion for reconsideration on June 20, 2018, thus, giving him only until July 5, 2018 to file the present petition. Since the petition was filed only on July 6, 2018, or one (1) day late, the dispositions of the Court of Appeals had therefore become final and executory. Hence, this Court no longer has jurisdiction to review these rulings.

Private respondents bewail petitioner's availment of Rule 65 instead of Rule 45 of the Revised Rules of Court. They too observe that the petition was not verified. Neither was it accompanied by certified true copies of the assailed Court of Appeals' rulings and pertinent pleadings.[37]

In any event, private respondents assert that sufficient evidence was presented to substantiate the charge of serious misconduct against petitioner. They cite the e-mail of Outage Excellence Leader Carruth detailing petitioner's infractions of Granite Services' safety code. There was also an incident report which documented petitioner's misconduct. Petitioner never contested the authenticity and accuracy of the contents of these documents.[38] Also, petitioner willfully and deliberately disregarded the safety procedures laid out by Granite Services: (a) he was aware that the compressor casings could not support substantial weight and could not be used as a platform; (b) he failed to give the proper signal to the crane operator which almost caused

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34 *Id.* at 12-13 and 16.
35 *Id.* at 14-15.
36 *Id.* at 112-162.
37 *Id.* at 116-131.
38 *Id.* at 132-136.

injury to his co-worker; and (c) he willfully did not wear a safety harness while working on top of a turbine though there was a line in place for a harness, which was the same line used by his co-workers to attach their own safety harnesses.[39]

Private respondents conclude that petitioner's repeated violations of safety precautions showed his indifference to and disregard of Granite Services' policies and as a result, he must be dismissed from work.[40]

Issues

1. Should the petition be dismissed for its alleged procedural lapses?

2. Did the Court of Appeals err in holding that petitioner was dismissed for a valid cause?

Ruling

To begin with, the Court is not a trier of facts. It is not the Court's function to analyze or weigh evidence all over again in view of the corollary legal precept that findings of fact of the Court of Appeals are conclusive and binding on this Court. The Court, nonetheless, may proceed to probe and resolve factual issues presented herein because the findings of the Court of Appeals are contrary to those of the labor arbiter and the NLRC.[41]

Procedural Issues

Private respondents assert that the assailed Court of Appeals' assailed issuances had already become final and executory because the present petition was filed one (1) day late.

This is inaccurate.

The petition was actually filed on time. Petitioner received the assailed Court of Appeals Resolution denying his motion for reconsideration on June 21, 2018,[42] and not June 20, 2018 as private respondents erroneously claim. Petitioner, therefore, had fifteen (15) days from June 21, 2018 or until July 6, 2018 within which to file the present petition. As private respondents correctly claim, the petition was filed on July 6, 2018, well within the 15-day reglementary period.

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39 *Id.* at 137-138.
40 *Id.* at 144.
41 See *Status Maritime Corporation, et al. v. Sps. Margarito B. Delalamon and Priscila A. Delalamon*, 740 Phil. 175, 189 (2014).
42 *Rollo*, p. 3.

Another. Contrary to private respondents' claim, the petition was accompanied by a certified true copy of the challenged Decision[43] and an original copy of the assailed Resolution.[44]

As for the verification and certification of non-forum shopping, petitioner had already submitted to the Court a notarized verification and certification of non-forum shopping[45] as noted in our Resolution dated November 12, 2018.[46]

With regard to the correctness of the remedy availed of, petitioner has labeled this petition as a "Petition/Appeal by *Certiorari*," albeit he cites grave abuse of discretion amounting to lack or excess of jurisdiction. There is nothing wrong with this for so long as it was initiated within fifteen (15) days from receipt of the assailed resolution pursuant to Rule 45.

Substantial Issue

Both the labor arbiter and the NLRC held that private respondents failed to substantiate the charge of serious or gross misconduct against petitioner. The Court of Appeals, on the other hand, held that private respondents were able to prove the alleged infractions.

In ***Distribution & Control Products, Inc. v. Santos***,[47] the Court reiterated that in termination cases, the burden of proof rests upon the **employer** to show that the dismissal is for just and valid cause. Failure to do so necessarily means that the dismissal was illegal. The employer's case succeeds or fails on the strength of its evidence and not on the weakness of the employee's defense. If doubt exists between the evidence presented by the employer and the employee, the scales of justice must be tilted in favor of the latter.

To prove petitioner's alleged violations of the safety procedures, respondent company submitted the e-mail of Outage Excellence Leader Carruth,[48] an Incident Report[49] regarding petitioner's supposed failure to sufficiently communicate with the crane operator, and the Termination Letter[50] signed by HR Manager Sargeant. The Court of Appeals considered these documents sufficient to hold that petitioner was dismissed for cause.

We disagree.

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43 *Id.* at 20-45.
44 *Id.* at 47-50.
45 *Id.* at 87.
46 *Id.* at 110-111.
47 813 Phil. 423, 433 (2017), citing *Agusan Del Norte Electric Cooperative, Inc., et al. v. Cagampang, et al.*, 589 Phil. 306, 313 (2008).
48 *Rollo*, p. 233.
49 *Id.* at 585-587.
50 *Id.* at 234-235.

Petitioner was charged with three (3) violations of safety procedures, *viz.*:

(a) He stood on top of the compressor casing on the back of a trailer, when he should have been working *from* the trailer;

(b) He was responsible for unclear communication between him and the crane operator which caused a casing to swing towards another employee; and

(c) He stood on top of a turbine with no safety harness.

As for the *first infraction*, no evidence other than Outage Excellence Leader Carruth's e-mail and the termination letter was presented to show that petitioner indeed stood on top of the compressor. Would a reasonably prudent person accept these documents as sufficient to prove the charge and on the basis thereof dismiss the employee from work? Certainly not. These pieces of evidence are self-serving documents which private respondents or any other person could have easily drafted. As it was not impossible for private respondents to access other witnesses, they should have secured the statements of other workers on site to corroborate their claim.

With regard to the *second infraction*, private respondents aver that petitioner failed to clearly communicate with the crane operator before signaling for the release of the casing. The Incident Report itself, however, states that he blew his whistle and gave the signal to the crane operator only after he "*finished checking casing alignment/center of gravity.*" It shows that petitioner took the necessary precautions before he gave the signal to the crane operator. When the crane operator hoisted up the casing, the casing swung to the left and narrowly missed another worker.

True, an accident could have occurred, but this does not necessarily mean that petitioner failed to take the proper precautions or that the incident was due to his fault. A lot of factors could have caused the casing to swerve to the left. It could have been caused by the crane operator. It could have also been caused by the mechanics of the crane itself. It was also possible that the employee who was nearly hit by the casing was not there when petitioner gave the signal. In fine, there are several circumstances which could have led to the incident. Private respondents did not investigate these factors; neither were they able to rule them out, like any reasonably prudent person would have done. Without any investigation to support private respondents' claim, it cannot be reasonably concluded that the incident was due solely to petitioner's negligence.

As for the *third and last incident*, petitioner repeatedly avers that there was no available line to which the safety harness could be attached; private respondents insists such available line was in place.

Once again, private respondents did not present any evidence to support this allegation. They could have produced photos showing that a line was available for the harness which petitioner could have used at that time. They could have easily produced these photos, but they failed to do so. Too, they could have secured the statements of other workers on site who were allegedly able to use the line for their own safety harness. But still, private respondents failed on this score. Instead, they relied solely on the self-serving, nay, unverified report of Outage Excellence Leader Carruth.

Verily, therefore, the Court of Appeals erred when it ruled that the charges against petitioner for violation of company safety procedures were substantiated by concrete and substantial evidence.

As for procedural due process, all three (3) tribunals below were unanimous in declaring that private respondents did not comply with the twin-notice rule. Private respondents did not send a written notice to petitioner informing him of his alleged infractions, nor was there an investigation where petitioner could have been given the chance to explain his side.

All told, the absence of both substantive and procedural due process in effecting petitioner's dismissal renders it illegal.

On the consequences of the illegality of petitioner's dismissal, ***Noblado v. Alfonso***[51] held:

> In fine, respondent's lack of just cause and non-compliance with the procedural requisites in terminating petitioners' employment taints the latter's dismissal with illegality.
>
> **Where the dismissal was without just or authorized cause and there was no due process**, Article 279 of the Labor Code, as amended, mandates that the employee is entitled to **reinstatement without loss of seniority rights** and other privileges and **full backwages, inclusive of allowances, and other benefits or their monetary equivalent computed from the time the compensation was not paid up to the time of actual reinstatement**. However, **if reinstatement is no longer possible, the backwages shall be computed from the time of the employee's illegal termination up to the finality of the decision**.
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> x x x x x x x x x

[51] 773 Phil. 271, 286 (2015).

> In addition to payment of backwages, petitioners are also entitled to **separation pay** equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of their illegal dismissal up to the finality of this judgment, as an alternative to reinstatement.
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> Also, in accordance with prevailing jurisprudence, **legal interest** shall be imposed on the monetary awards herein granted at the rate of six percent (6%) per annum from the finality of this Decision until fully paid. (Emphasis supplied)

Thus, an illegally dismissed employee is ordinarily entitled to: (a) reinstatement without loss of seniority rights and other privileges, or in lieu thereof, separation pay equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of the employee's illegal dismissal up to the finality of the judgment; and (b) full backwages inclusive of allowances and other benefits or their monetary equivalent computed from the time compensation was not paid to the time of his actual reinstatement.

As for reinstatement, petitioner has not sought the same way back in the proceedings before the labor arbiter and up until here. On this score, we reckon with the pronouncement of the labor arbiter:

> x x x this Labor Arbitration Court finds that reinstatement is no longer feasible because of the existence of strained relation between the parties and the respondent's lack of intention to reinstate the complainant by their offer, by way of amicable settlement, of separation pay during the mandatory conference. Notably, the settlement through payment of separation pay failed to materialize because of the parties' disagreement as to the rate of pay to be used.[52]

Consequently, petitioner is entitled to backwages of one (1) month for every year of service from the time of his illegal dismissal up to finality of this Decision.

As regard the amount of petitioner's backwages, the Court agrees with the labor arbiter that petitioner's monthly retainer/waiting fee of Php18,000.00 and not his monthly salary in Ghana (USD900.00 per month) should be used in the computation.

Philippine National Construction Corporation (PNCC) v. NLRC, et al.[53] instructs:

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[52] *Rollo*, p. 457.

[53] 349 Phil. 986, 992 (1998).

> An illegally dismissed employee is usually reinstated to his former position without loss of seniority rights and paid backwages from the time he was separated from work up to his actual reinstatement. The purpose of reinstatement is to restore the employee to the state or condition from which he has been removed or separated. Backwages aim to replenish the income that was lost by reason of the unlawful dismissal.
>
> In the case at bar, we hold that the NLRC gravely abused its discretion in computing private respondent's backwages based on his salary abroad. The records show that ***private respondent was not illegally dismissed while working in the Middle East project*** **of the petitioner. His overseas assignment was a specific project and for a definite period**. Upon the completion of the project in 1984, he received all the benefits due him under the overseas contract. He then voluntarily returned to the Philippines to await his deployment in the local projects of the petitioner. Clearly, he was not illegally dismissed while working in the Middle East.
>
> **When private respondent prayed for reinstatement, he meant reinstatement to his position as a regular member of petitioner's work pool. If private respondent were given local assignments after his stint abroad, he would have received the local wage. This is the "loss" which backwages aim to restore.**
>
> In making this ruling, we take into account the principle that salary scales reflect the standard of living prevailing in the country and the purchasing power of the domestic currency. Private respondent received a higher salary rate for his work in the Middle East because the cost of living and the standard of living in that country are different from those in the Philippines. (Emphasis supplied)

Petitioner here was a regular member of private respondents' work pool. He was assigned in Ghana only for a specific period, *i.e.*, January 2012 to March 2012. On March 3, 2012, he returned to the Philippines. Thus, he had already completed his contract in Ghana when Granite Services dismissed him from work.

As in ***PNCC***, petitioner already received all the benefits due him under the completed and concluded overseas contract. He returned to the Philippines not as a worker from Ghana but as a member of the regular work pool of Granite Services. As such, he is entitled to receive not the amount stipulated in his Ghana contract but the monthly retainer/waiting fee of P18,000.00. Consequently, the same should be the base amount for the computation of his backwages.

But petitioner argues that his salary in Ghana should be the basis for the computation of his backwages because he had not actually completed yet

his overseas contract. He claims that private respondents prematurely pulled him out from Ghana in the guise of another overseas deployment.

Aside from this bare allegation, however, no evidence was adduced to prove that he was actually pulled out from Ghana in the guise of another overseas deployment. In fact, Labor Arbiter Dolosa and the NLRC found that petitioner had already finished his contract in Ghana. This factual finding is binding upon us since even the Court of Appeals did not deviate therefrom.

Verily, in accordance with the ruling in ***PNCC***, petitioner's monthly retainer or waiting fee in the Philippines should be the basis for the computation of his backwages.

On the award of damages, ***Leus v. St. Scholastica's College Westgrove***[54] bears the ground rules:

> x x x A dismissed employee is entitled to **moral damages when the dismissal is attended by bad faith or fraud or constitutes an act oppressive to labor, or is done in a manner contrary to good morals, good customs or public policy. Exemplary damages may be awarded if the dismissal is effected in a wanton, oppressive or malevolent manner.**
>
> Bad faith, under the law, does not simply connote bad judgment or negligence. It imports a **dishonest purpose** or some moral obliquity and conscious doing of a wrong, or a breach of a known duty through some motive or interest or ill will that partakes of the nature of fraud.
>
> **It must be noted that the burden of proving bad faith rests on the one alleging it** since basic is the principle that good faith is presumed and he who alleges bad faith has the duty to prove the same. *Allegations of bad faith and fraud must be proved by clear and convincing evidence.*
>
> The records of this case are bereft of any clear and convincing evidence showing that the respondents acted in bad faith or in a wanton or fraudulent manner in dismissing the petitioner. That the petitioner was illegally dismissed is insufficient to prove bad faith. A dismissal may be contrary to law but by itself alone, it does not establish bad faith to entitle the dismissed employee to moral damages. The award of moral and exemplary damages cannot be justified solely upon the premise that the employer dismissed his employee without cause.
>
> However, the petitioner is entitled to **attorney's fees** in the amount of **10% of the total monetary award** pursuant to Article 111of the Labor Code. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable. (Emphasis supplied)

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[54] 752 Phil. 186, 218-220 (2015).

As in ***Leus***, petitioner failed to show the requisite elements for the award of damages here. He failed to substantiate that private respondents acted in bad faith, or that his dismissal constitutes an act oppressive to labor, or that his dismissal was done in a manner contrary to good morals, good customs or public policy, or that his dismissal was done in wanton, oppressive, or malevolent manner.

Following both statutory and case law, petitioner should be paid attorney's fees equivalent to ten percent (10%) of the total monetary award. This is because he was forced to litigate and incur expenses to protect his rights and interest.

Petitioner is entitled to legal interest at the rate of six percent (6%) on all the monetary awards to him per annum from the finality of this Decision until fully paid.[55]

Notably, however, the NLRC's judgment, which fixed a higher amount of backwages had already been executed. The only question is whether there was a full or partial satisfaction of the correct amount. On this score, there is a need for the labor arbiter to recompute the executed amount *vis-à-vis* the judgment amount. Whatever amount may still be deficient or paid in excess should be satisfied by or refunded to private respondents, as the case may be.

One final point. There is no proof that private respondents Joseph Medina, Daniel Sargeant, and April Anne Junio acted with malice or bad faith. They cannot be held solidarily liable with Granite Services.[56] This is especially true for private respondent April Anne Junio who was not even impleaded as party respondent before the labor tribunals.

ACCORDINGLY, the petition is **GRANTED**. The Decision dated August 18, 2017 and Resolution dated May 29, 2018 of the Court of Appeals in CA-G.R. SP No. 130731 and CA-G.R. SP No. 134905 are **REVERSED** and **SET ASIDE**. Private respondent Granite Services International, Inc. is ordered to **PAY** petitioner Domingo P. Gimalay the following:

1) Full backwages computed at Php18,000.00 per month, inclusive of allowances and other benefits, including but not limited to service incentive leave pay and 13th month pay, from the time of his dismissal on March 7, 2012 up to the finality of this Decision;

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55 *Noblado, et al. v. Alfonso*, supra note 51, at 287.
56 See *Dimson v. Chua*, 801 Phil. 778, 792 (2016).

2) Separation pay equivalent to one (1) month pay of Php18,000.00 for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, computed from the date he got hired as a regular member of the company's work pool on January 1, 2007 up to the finality of this Decision; and

3) Attorney's fees equivalent to ten percent (10%) of the total monetary award.

These monetary awards shall earn legal interest at the rate of six percent (6%) per annum from the finality of this Decision until fully paid.

The case is **REMANDED** to Labor Arbiter Alberto B. Dolosa for the determination of whether the total monetary award has already been fully or partially satisfied. Any unpaid amount should be further satisfied or any excess payment returned to Granite Services International, Inc..

SO ORDERED.

AMY C. LAZARO-JAVIER
Associate Justice

WE CONCUR:

DIOSDADO M. PERALTA
Chief Justice
Chairperson, First Division

ALFREDO BENJAMIN S. CAGUIOA
Associate Justice

JOSE C. REYES, JR.
Associate Justice

MARIO V. LOPEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

DIOSDADO M. PERALTA
Chief Justice